

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEBORAH COONEY,

No. C 12-6466 CW

Plaintiff,

ORDER DENYING
MOTION FOR LEAVE
TO APPEAL IN FORMA
PAUPERIS

v.

THE CALIFORNIA PUBLIC UTILITIES
COMMISSION, et al.,

Defendants.

_____ /

Plaintiff Deborah Cooney, proceeding pro se, seeks to appeal this Court's Amended Judgment dated November 26, 2014. The matter comes before the Court on Cooney's motion for leave to appeal in forma pauperis. For the reasons set forth below, Cooney's motion is DENIED.

"[A] party to a district court action who desires to appeal in forma pauperis must file a motion in the district court." Fed. R. App. P. 24(a)(1). "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3); see also Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (construing "not in good faith" to mean frivolous). An appeal is frivolous if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). "If the district court denies the motion, it must state its reasons in writing." Fed. R. App. P. 24(a)(2).

Cooney's claims, briefly stated, were that she was injured by radio waves released by smart meters installed on her house and in her neighborhood. Cooney sought monetary damages, declaratory relief and an injunction against several Defendants. The Court granted Defendants' motion to dismiss, holding that several Defendants were shielded from suit by the Eleventh Amendment to the United States Constitution and/or legislative immunity, that the Court lacked subject matter jurisdiction over Cooney's state law claims and that Cooney's cited federal laws were inapplicable. The Court concluded that amendment would be futile and thus dismissed Cooney's complaint without leave to amend.

In her motion for leave to appeal in forma pauperis, Cooney lists seven bases for taking an appeal. Having reviewed the motion, the Court finds that her appeal has no arguable basis in law or fact. The Court dismissed her suit based on firmly-established black-letter law; Cooney simply does not have a case against her named Defendants that can proceed in federal court. Accordingly, Cooney's motion is DENIED and this Court CERTIFIES that her appeal is frivolous and therefore is not taken in good faith.

CONCLUSION

For the reasons set forth above, Cooney's motion for leave to proceed IFP is DENIED. Pursuant to Federal Rules of Appellate Procedure 24(a)(4)(A) and (B), the Clerk shall notify the Ninth Circuit that this Court has denied Cooney's motion to proceed IFP and certified that her appeal is not taken in good faith. Pursuant to Rule 24(a)(5), Cooney may file a motion for leave to

1 proceed IFP on appeal in the Court of Appeals within thirty (30)
2 days after service of notice of this order.

3 IT IS SO ORDERED.

4
5 Dated: January 9, 2015


6 CLAUDIA WILKEN
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28